UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/61/Add.2
24 March 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Agenda item 11 (d)

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, submitted in accordance with Commission resolution 1999/31

Addendum

Sri Lanka

1. In paragraphs 252 and 255 of his main report (E/CN.4/2000/61), the Special Rapporteur referred to his communication of 28 October 1999 to the Government of Sri Lanka concerning the criminal prosecution of Jayalath Jayawardena and the Government's acknowledgement, dated 29 October, of receipt of the same communication.

2. Since the completion and submission of the main report, the Special Rapporteur received a communication dated 3 February 2000 from the Government in response to the points raised in the communication of 28 October 1999.

3. The Government refuted the allegations that the trial had been postponed several times at the behest of the prosecution for unsubstantial reasons and orchestrated by the Government to frustrate international observers. It explained as follows:

(a) The request for postponement on 14 October 1999 was due to a genuine personal difficulty, which arose on the morning of the trial date as a result of persistent torrential rains. The Prosecuting Counsel was in fact prepared to conduct the trial;

(b) When it became apparent that he would not be able to proceed to work that morning, immediate steps were taken to inform the Senior Defence Counsel about the difficulty. Further, the Permanent State Counsel was instructed to obtain early dates in November, which he did;

(c) Consequently, there is nothing to indicate that the Prosecuting Counsel acted other than with a sense of responsibility in the circumstances;

(d) It should be reiterated that questions of impartiality and fairness cannot arise when an application for postponement is made on the basis of a genuine personal difficulty. The presence of international observers at the trial is welcome. However, it does not have any negative effect on the manner in which the trial is conducted by the prosecution. International observers should be assured that the postponements are in no way connected to their presence at the trial. There has been no request made to the Attorney-General to inform international observers regarding postponements which could be anticipated in advance. Such a request could be accommodated, if made;

(e) The trial was taken up on 11 and 30 November and the evidence of all the witnesses who were summoned on those two days was taken and concluded;

(f) Further trial was fixed for 21 January and 10 February this year. On 21 January, none of the witnesses were available. It was later found upon inquiries being made that the summons had been sent for 10 February only and not 21 January, owing to a mistake on the part of the court staff.

4. In paragraph 259, the Special Rapporteur observed that the appointment of the Chief Justice was being challenged before the Supreme Court and that hearing would be continued on 7 and 8 February 2000. The Special Rapporteur has since been informed that in view of certain preliminary objections taken by the petitioners' counsel, the Court has further adjourned hearing to 26 and 27 June 2000.

Malaysia

5. In paragraph 199 of the main report, the Special Rapporteur stated that the hearing of his appeal was postponed for continuation on 9 February 2000. The same hearing has since been further postponed to 11 May 2000.